



UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF ENROLLMENT AND DISCIPLINE

OCT 3 2006

Mr. Henry W. Cummings
3313 W. Adams St.
St. Charles, MO 63301

CERTIFIED MAIL 7093315000090788101
RETURN RECEIPT REQUESTED

PERSONAL AND CONFIDENTIAL

Re: File No. C2006-123

REQUEST FOR STATEMENT OF RESPONDENT'S POSITION

Dear Mr. Cummings:

Please be advised that the Office of Enrollment and Discipline ("OED") received information regarding you. It is important for you to understand that the issuance of this letter means that the information regarding you has survived the Office of Enrollment and Discipline's initial screening process and that, based upon the information currently available to us, it appears that your conduct may have violated the United States Patent and Trademark Office ("USPTO") Code of Professional Responsibility.

It is also important for you to understand that it is the obligation of this office to develop all relevant information, including that information which may justify or exonerate the alleged actions of registered practitioner or mitigate the seriousness of any violations that may have occurred. Your statement of position, if you choose to file one, may result in a decision to dismiss the matter. However, since the information has survived our initial screening process, you may wish to retain or consult with counsel before submitting a statement of your position.

The information and facts presently under consideration are as follows:

- Answer
question*
1. Your check No. 4286 made payable to the "Comm. Patents" dated January 5, 2006 in the amount of \$1,000 for fees related to U.S. Application No. 10/725,100 ("100 Application") was returned marked "refer to maker." Please inform us whether, when and how the client(s) delivered funds to you to pay the \$1,000 fee to the USPTO. Please inform us whether or not the account on which the check was drawn is a trust account, and the amount in the account on January 5, 2006. Please advise as to whether or not the client(s) is aware of the situation and has authorized the nonpayment.
 2. Check No. 4286 was submitted to pay the publication and issue fees in '100 Application. On October 11, 2005, the Notice of Allowance and Fee(s) Due was

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mailed to you in the '100 Application. The Notice of Allowance and Fee(s) Due stated that:

THE ISSUE FEE AND PUBLICATION FEE . . . MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED.

Check 4286 was returned unpaid and marked "refer to maker." Please advise as to what measures you have taken to make payment.

- Answer
Question*
3. Your check No. 5201 made payable to the "Comm. for Patents" and dated April 10, 2006, in the amount of \$500 for fees related to U.S. Patent application 11/104,995 ('995 Application), was returned because of insufficient funds. The fee was for filing the '995 application, filed on April 12, 2005. Please inform us whether, when and how the client(s) delivered funds to you to pay the \$500 fee to the USPTO. Please inform us whether or not the account on which the check was drawn is a trust account, and the amount in the account on April 10, 2006. Please advise as to whether or not the client(s) is aware of the situation and has authorized the nonpayment.
- Answer
Question*
4. Please advise as to what, if any, corrective measures have been undertaken with respect to the '995 Application. The '995 Application contains a declaration containing your name and address as the address for correspondence. There is no power of attorney of record in the '995 Application. Please identify the person who drafted the '995 Application. Please advise as to the extent of your role in the filing of the '995 Application.
- Answer
Question*
5. Your check No. 5224 made payable to the "Comm. for Patents" dated May 18, 2006, in the amount of \$300 for fees related to U.S. Provisional Patent Application No. 60/779,974 ('974 Application) was returned because of insufficient funds. Please inform us whether, when and how the client(s) delivered funds to you to pay the \$300 fee to the USPTO. Please inform us whether or not the account on which the check was drawn is a trust account, and the amount in the account on May 18, 2006. Please advise as to whether or not the client(s) is aware of the situation and has authorized the nonpayment.
6. In a Notice to File Missing Parts of Provisional Application dated April 25, 2006 (April 25, 2006 Notice) in the '974 Application, you were given two months to pay \$175 for the statutory basic filing fee and \$50 surcharge.
7. A "Request to be Accorded Filing Date and Small Entity Status from Prior Appl." was filed in the '974 Application on May 15, 2006 (May 15, 2006 Request), bearing your name in the signature block. The May 15, 2006 Request stated:

4. Attached is check no. 5224 for \$300 as payment for the filing fee portion remaining due on this application.

8. In a letter dated June 12, 2006 from the Office of Initial Patent Examination, you were advised:

... [C]heck No. 5224, dated May 18, 2006 in the amount of \$300.00 has been returned by the bank as unpaid.

The practice of the Office is to treat such returned checks as though the fee for which they were intended was never received. Therefore, you are required to submit the following fee(s):

X \$100.00 filing fees

X \$25.00 surcharge for a late filing fee

X \$50.00 fee for processing a returned check

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THE REQUIREMENTS OF THIS NOTICE IS SET TO EXPIRE TWO MONTHS FROM THE DATE OF THIS NOTICE.

FAILURE TO RESPOND WITHIN THIS PERIOD WILL RESULT IN ABANDONMENT OF THE APPLICATION.

Please advise as to whether or not you received the June 12, 2006 letter. If so, please advise as to what action you took in response to the June 12, 2006 letter. Please advise whether or not the client authorized you to abandon the '974 Application.

- Answer*
Answer
9. Your check No. 5194 made payable to the "Comm. for Patents" and dated April 6, 2006, in the amount of \$350 for fees related to U.S. Patent application 11/402,673 ('673 Application), was returned because of insufficient funds. The fees were for filing the '673 Application, filed on April 14, 2005. Please inform us whether, when and how the client(s) delivered funds to you to pay the \$350 fee to the USPTO. Please inform us whether or not the account on which the check was drawn is a trust account, and the amount in the account on April 6, 2006. Please advise as to whether or not the client(s) is aware of the situation and has authorized the nonpayment.
- Answer*
Answer
10. A Notice to File Corrected Application Papers dated May 15, 2005 (May 15, 2006 Notice) in the '673 Application has been mailed to you. The May 15, 2006 Notice required total additional fees of \$415 to be submitted within two months from the date of the May 15, 2006 Notice. Please advise as to whether or not you received the May 15, 2006 Notice. If so, please advise as to what action, if any, you took in response to the May 15, 2006 letter. Please advise whether or not the client authorized you to abandon the '673 Application.
11. The '673 Application contains a declaration dated April 7, 2006, listing your name and address as the correspondence address. There is no power of attorney

*See
Quinlan*
associated with the '673 Application. Please advise as to whether or not you are representing the inventor, David Len Griffin. If so, please explain why a power of attorney is not of record in the '673 Application.

If the above allegations are true, we are concerned that you may have violated the following Disciplinary Rules:

37 CFR § 10.23 - Misconduct

(b) A practitioner shall not:

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(3) Engage in illegal conduct involving moral turpitude,

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on the practitioner's fitness to practice before the Office.

37 CFR § 10.77 - Failing to act competently

A practitioner shall not:

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(c) Neglect a legal matter entrusted to the practitioner.

Since the grievance raises questions of the handling of funds from the period of January 5, 2006 until May 18, 2006, it is appropriate to establish that the funds received were properly maintained separate from your own funds. Please provide copies of your client ledger card, if any, and all financial and bank records that you have concerning any and all money that you received in legal fees and costs for your work for the matters identified above. Please also provide all financial records that you have concerning any and all money that you received from or on behalf of the client(s) in the matters identified above. Please also consider this a request for a copy of your bank records and an accounting of these funds from January 2006 through June 2006, and an accounting of the legal work you performed on behalf of the client(s) in the matters identified above. The information is requested pursuant to 37 CFR §§ 10.112 and 10.131(a).

The Director of Enrollment and Discipline will make no determination for disposition of this matter until you have been afforded an opportunity to state your position with respect thereto within thirty (30) days of the date of this letter. This is your opportunity pursuant to 5 U.S.C.

§ 558(c), if appropriate, to demonstrate that you are or have come into compliance with the Office's Code of Professional Responsibility. While you are not required to reply to this letter, it is quite possible that your reply may provide this office with information leading to a favorable resolution. Should you need more time during which to submit your position, do not hesitate to request a reasonable extension.

Please be assured that we are not prejudging the alleged facts and charges. Rather, we are conducting an impartial and unbiased investigation pursuant to 37 CFR § 10.131(a) with regard to the grievance. In that regard, we will attempt to verify the statements in your reply just as we do with all the statements made to us in this matter. For this reason, and because a registered practitioner may be subject to discipline for making a materially false statement or deliberately failing to disclose a material fact in connection with a disciplinary matter (see 37 CFR §§ 10.23(b)(4), 10.23(b)(5) and 10.23(d)), you should be careful to be accurate in your factual statements.

If you file a reply, please address whether Edward Nitenson, Robert Cumings, Bret Wain Martin, Patrick Harvey Colcissure, Susan Renee Colcissure, and/or David Len Griffin is (are) your client(s) or former client(s). As you presumably know, under 37 CFR 10.57(c)(4) a practitioner may reveal client confidences and secrets necessary to defend himself or herself against accusations of wrongful conduct, and under 37 CFR 10.24(a), a practitioner possessing unprivileged knowledge of a violation of a Disciplinary Rule shall report such knowledge to the Director.

In any reply that you make, please chronologically and specifically state your account of the events and include copies of any particularly pertinent documents to which you refer. Generally, it is most helpful if your reply deals item-by-item with the allegations contained in the numbered paragraphs in this letter, as well as with the cited Rules. If we do not hear from you within thirty (30) days, we may assume that you do not desire to submit your position with respect to the grievance, and OED may proceed to make a determination for the appropriate disposition on the basis of the information and material contained in our file. However, the OED Director would certainly prefer to have the benefit of your position before making a determination. Should you need more time during which to submit your position, do not hesitate to request a reasonable extension.

If you have any questions, you or your counsel should not hesitate to contact this office. Thank you for your anticipated cooperation and assistance in this important matter. We look forward to receiving your reply. Please address your reply to Mail Stop OED, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313-1450. Please refer to OED file number appearing above in the heading of your response.

Sincerely,



Lawrence E. Anderson, Staff Attorney (571) 272-6064
Office of Enrollment and Discipline